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**COURT OF APPEAL, FOURTH DISTRICT**

**DIVISION TWO**

**STATE OF CALIFORNIA**

In re PATRICK C., a Person Coming Under  
the Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT OF  
PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

KATHY C.,

Defendant and Appellant.

E029865

(Super.Ct.No. J-097297)

OPINION

APPEAL from the Superior Court of Riverside County. Robert W. Nagby,  
Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Francia M. Welker, under appointment by the Court of Appeal, for Defendant and  
Appellant.

William C. Katzenstein, County Counsel, and Julie A. Koons, Deputy County  
Counsel, for Plaintiff and Respondent.

John L. Dodd, under appointment by the Court of Appeal, for Minor.

## 1. Introduction

Mother, Kathy C., appeals from an order denying her section 388<sup>1</sup> petition and an order and judgment terminating her parental rights. The Riverside County Department of Public Social Services (DPSS) responds to her appeal. We affirm the orders and judgment below.

## 2. Factual and Procedural Background

Patrick C., the subject of this appeal, was born on January 2, 1995. At age four, in September 1999, the child was originally detained by the juvenile court after his father, Dean W., was arrested and the police found a clandestine methamphetamine laboratory in the garage of the child's residence. Both mother and father had a long history of drug abuse and Patrick was born drug-exposed. Patrick demonstrated significant behavioral problems. Patrick was placed with his paternal grandmother, Maryann W. In November 1999, the court sustained the juvenile dependency petition and ordered reunification services for mother.

In May 2000, the DPSS reported that mother had completed a parenting class and was participating in some counseling services and drug testing. But mother was unemployed and living in an apartment not suitable for Patrick. She was also pregnant. Patrick continued to live with his paternal grandmother. His behavior was still troubled but improving.

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<sup>1</sup> Welfare and Institutions Code section 388. All further statutory references are to the Welfare and Institutions Code.

At the six-month review hearing in June 2000, the court found mother had not completed her case plan and ordered reunification services to continue for another six months.

In December 2000, the DPSS reported that, in July, mother had given birth to a child whom she released for adoption. Mother had not enrolled in an approved drug program. She was not living in a suitable home and was not responding to the social worker's efforts to contact her. Meanwhile, Patrick was doing well in his grandmother's care. Mother visited him once or twice a week. The DPSS recommended termination of services to mother and adoption by the grandmother.

In a subsequent report in January 2001, the DPSS supplied the information that mother was still not participating in an approved drug program and had tested positive for use of methamphetamine in October 2000. She also was not communicating with the social worker and was unemployed. Meanwhile, Patrick was making good progress. The DPSS recommended placement with the grandmother.

On January 31, 2001, the court found mother had not completed her plan for reunification and ordered services terminated.

In its next report to the court, the DPSS described mother's angry encounters with the social worker and mother's threat to kidnap Patrick. Mother also voiced her intention to stop Patrick's medication if she regained custody. Mother made a habit of sending her friend, Dale, to pick up Patrick for visitation, rather than going herself. The report also offered a preliminary adoption assessment of Patrick's grandmother, a 63-year-old school teacher, in good health and financially stable.

In June 2001, mother filed a petition for modification,<sup>2</sup> alleging: she had tested negative for drugs since November 2000; she was obtaining counseling; she was visiting Patrick regularly; and Patrick wanted to live with her.

Before the selection and implementation hearing, the DPSS filed its supplemental report describing mother's lack of cooperation, hostility, and aggressiveness. The DPSS recommended termination of parental rights and adoption as a permanent plan for Patrick.

At the hearing, mother testified that she has been taking methadone since 1982 but she planned to stop taking it within a year or two. She had not tested positive for drug use for six months. She also attended regular counseling. She denied wanting to stop Patrick's medication. She said Patrick wanted to live with her and she was occupying a suitable three-bedroom house.

The court denied mother's section 388 petition. The court then found Patrick was adoptable and adoption was in his best interests. The court ordered parental rights terminated. It also noted for the record that Patrick had volunteered a statement to the effect that he wanted to live with his mother. But the court expressly declined to consider the statement.

This appeal followed.

### 3. Section 388 Petition

Mother argues the juvenile court abused its discretion by denying her section 388 petition because it misconstrued the statutory requirement to show change of circumstance

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<sup>2</sup> Section 388.

*[footnote continued on next page]*

or new evidence and did not consider the best interests of the child. The court did not reach the second factor because it decided mother had not shown sufficient evidence of changed circumstances.

Mother argues the court was wrong in finding she did not show changed circumstances even while it acknowledged she had made significant progress. As evidence, she cites her clean drug tests; her participation in drug abuse counseling; her intention of going off methadone in the future; and her new house. Mother also argues the court should have considered six-year-old Patrick's wish to live with her as part of the changed-circumstances analysis and permitted him to testify.

In reviewing the denial of a section 388 petition, we apply the abuse of discretion test.<sup>3</sup> The record shows that mother submitted to drug testing once a month and attended counseling once a month for a six-month period from November 2000 to May 2001. The counseling program was the one she had participated in since 1987 to little effect since she continued to abuse drugs, even to the extent of exposing Patrick at his birth. Furthermore, mother had refused to enroll in the more intensive certificated drug program to which the DPSS had referred her. This meager showing of compliance did not demonstrate changed circumstances.

The fact that mother was occupying a better house was also not enough to show changed circumstances, particularly because she did not have a job and did not explain how

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*[footnote continued from previous page]*

<sup>3</sup> *In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.

*[footnote continued on next page]*

she would pay for rent. Thus, we agree that the court did not need to consider Patrick's desire to live with his mother absent a preliminary showing by mother of a change in *her* circumstances.

Although strong public policy favors reuniting parents with their children, equally strong policies favor securing for a child a stable home. Once reunification services have been terminated, the goals of stability and continuity create “a rebuttable presumption that continued foster care is in the best interests of the child.”<sup>4</sup> Here we presume Patrick's best interests were best served by a grandmother who provide a safe, stable, consistent homelife. Mother did not succeed in rebutting that presumption. In denying mother's section 388 petition, the trial court did not act arbitrarily or capriciously, or exceed the bounds of reason.<sup>5</sup>

#### 4. Termination of Parental Rights

Mother next asserts the court abused its discretion by terminating her parental rights and freeing Patrick for adoption. Mother relies on the “benefit” exception set forth in section 366.26, subdivision (c)(1)(A). She maintains she has engaged in regular visitation and contact and Patrick would benefit from a continuing relationship. Instead of adoption, she proposes the better permanent plan would be guardianship.

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*[footnote continued from previous page]*

<sup>4</sup> *In re Stephanie M.*, *supra*, 7 Cal.4th at page 317.

<sup>5</sup> *In re Stephanie M.*, *supra*, 7 Cal.4th at pages 318-319.

The proper standard of review is not abuse of discretion but the substantial evidence test.<sup>6</sup> In the present case, the record, offers slight, if any, support for mother's position.

In order for the benefit exception to apply, a parent opposing termination of her rights must establish she has engaged in regular visitation and contact with the child and the benefit to the child of maintaining the parent-child relationship outweighs the benefit of adoption. Here, as to the first prong, mother did not visit Patrick regularly or successfully. Sometimes mother missed her visits. Other times she sent her friend, Dale, in her place. Ultimately, visitation had to be supervised because Patrick's doctor expressed concern that the visits were affecting Patrick negatively.

As to the second prong, mother must show more than an incidental benefit. There must exist "a significant, positive, emotional attachment from child to parent" in which "the relationship promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents."<sup>7</sup> The foregoing is not, as mother protests, impossible to establish.<sup>8</sup> But mother did not make an adequate showing here. Mother had little to offer Patrick. Although Patrick had been detained 21 months earlier, by June 2001, mother had no job and an unstable living situation. Her abstention from drugs was by no means certain. Her efforts at visitation

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<sup>6</sup> *In re Brandon C.* (1999) 71 Cal.App.4th 1530, 1533-1538.

<sup>7</sup> *In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.

<sup>8</sup> *In re Brandon C.*, *supra*, 71 Cal.App.4th at pages 1533-1538.

were erratic. There was no evidence of a significant attachment between mother and Patrick. Mother did not establish the benefit exception.

As to mother's argument that guardianship is a better plan than adoption, "[w]here there is no probability of reunification with a parent, adoption is the preferred permanent plan."<sup>9</sup>

5. Disposition

We affirm the judgment.

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s/Gaut  
J.

We concur:

s/Hollenhorst  
Acting P. J.

s/Ward  
J.

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<sup>9</sup> *In re Tabatha G.* (1996) 45 Cal.App.4th 1159, 1164.